

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

IVY CAPITAL, INC., *et al.*,

Defendants, and

CHERRYTREE HOLDINGS, LLC, *et al.*,

Relief Defendants.

Case No. 2:11-cv-00283-JCM-
GWF

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION AND
MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (the “FTC” or the “commission”), filed a complaint for permanent injunction and other equitable relief, including redress to consumers and disgorgement of ill-gotten gains (the “complaint”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. §§ 6101-6108. The FTC and defendants Ivy Capital, Inc. (“Ivy Capital”), Fortune Learning System, LLC (“FLS”), Vianet, Inc. (“Vianet”), 3 Day MBA, LLC (“3 Day MBA”), Global Finance Group, LLC (“GFG”), Virtual Profit, LLC (“Virtual Profit”), ICI Development, LLC (“ICI Development”), Ivy Capital, LLC, Logic Solutions, LLC (“Logic Solutions”), Oxford Debt Holdings, LLC (“Oxford Debt”), Revsynergy, LLC (“Revsynergy”), and Sell It Visions, LLC (“Sell It”) (collectively, the “corporate defendants”) by and through their counsel, hereby stipulate to the entry of, and request the court to enter, this stipulated final judgment and order for permanent injunction and monetary relief (“order”), to resolve all matters of dispute between them in this action.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This is an action by the commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The commission has authority to seek the relief contained herein;
2. The complaint states a claim upon which relief may be granted under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's trade regulation rule entitled the Telemarketing Sales Rule (the "TSR"), 16 C.F.R. Part 310;
3. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b);
4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b);
5. The activities of the corporate defendants, as alleged in the complaint, are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
6. The corporate defendants have entered into this order freely and without coercion, and they acknowledge that they have read the provisions of this order, understand them, and are prepared to abide by them;
7. The FTC and the corporate defendants, by and through their counsel, have agreed that the entry of this order resolves all matters in dispute between them arising from the complaint up to the date of entry of this order;
8. This order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by the corporate defendants or a finding that the

1 law has been violated as alleged in the complaint, or that the facts alleged in the
2 complaint, other than the jurisdictional facts, are true;

3 9. The corporate defendants waive all rights to seek appellate review or otherwise
4 challenge or contest the validity of this order. The corporate defendants further waive
5 and release any claim they may have against the FTC, its employees, representatives,
6 or agents concerning the prosecution of this action to the date of this order;

7 10. The corporate defendants agree that this order does not entitle them to seek or obtain
8 attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C.
9 § 2412, concerning the prosecution of this action to the date of this order. Each
10 settling party shall bear its own costs and attorneys' fees; and

11 11. Entry of this order is in the public interest.

12
13 **DEFINITIONS**

14 For the purpose of this order, the following definitions shall apply:

- 15 1. "And" and "or" shall be understood to have both conjunctive and disjunctive
16 meanings.
- 17 2. "Asset" means any legal or equitable interest in, right to, or claim to, any real,
18 personal, or intellectual property including, but not limited to, chattel, goods,
19 instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts,
20 mail or other deliveries, shares or stock, securities, inventory, checks, notes, accounts,
21 credits, receivables (as those terms are defined in the Uniform Commercial Code),
22 cash, trusts, including but not limited to asset protection trusts, and reserve funds or
23 other accounts associated with any payments processed on behalf of any defendant,
24 including, but not limited to, such reserve funds held by a payment processor, credit
25 card processor, or bank.

- 1 **3. "Assisting others"** includes, but is not limited to, providing any of the following
2 goods or services to another entity: (1) performing customer service functions,
3 including, but not limited to, charging consumers for products or services, or
4 receiving or responding to consumer complaints; (2) drafting or providing, or
5 arranging for the drafting or provision of, any promotional material; (3) providing
6 names of, or assisting in the generation of, potential customers; (4) performing
7 promotional or marketing services of any kind, or recruiting affiliates; or (5)
8 processing credit and debit card payments.
- 9 **4. "Business coaching program"** means any program, plan, product, or service,
10 including, but not limited to, those related to work-at-home-opportunities, that is
11 represented, expressly or by implication, to train or teach a participant or purchaser
12 how to establish a business or earn money or other consideration through a business.
13 "Business coaching" shall not include providing services other than training or
14 teaching, including, but not limited to, website design and search engine optimization.
- 15 **5. "Commission" or "FTC"** means the Federal Trade Commission.
- 16 **6. "Corporate defendants"** means Ivy Capital, FLS, Vianet, 3 Day MBA, GFG, Virtual
17 Profit, ICI Development, Ivy Capital, LLC, Logic Solutions, Oxford Debt,
18 Revsynergy, and Sell It; and their successors, assigns, affiliates or subsidiaries.
- 19 **7. "Defendants"** means the individual defendants and the corporate defendants,
20 individually, collectively, or in any combination. The relief defendants are expressly
21 excluded from this definition.
- 22 **8. "Document"** is synonymous in meaning and equal in scope to the usage of the term
23 in the Federal Rules of Civil Procedure 34(a), and includes writing, drawings, graphs,
24 charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-
25 mail and instant messages, photographs, audio and video recordings, contracts,

1 accounting data, advertisements (including, but not limited to, advertisements placed
2 on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup
3 postings, World Wide Web pages, books, written or printed records, handwritten
4 notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business
5 canceled checks and check registers, bank statements, appointment books, computer
6 records, and other data compilations from which information can be obtained and
7 translated, if necessary, through detection devices into reasonably usable form. A
8 draft or non-identical copy is a separate document within the meaning of the term.

9 **9. "Individual defendants"** means Kyle G. Kirschbaum, John H. Harrison, and Steven
10 E. Lyman.

11 **10. "Material"** means likely to affect a person's choice of, or conduct regarding, goods
12 or services.

13 **11. "Non-disparagement agreement"** means any contract or agreement that purports to
14 prohibit purchasers from providing information, making statements, or otherwise
15 communicating in any way about their experiences with any business coaching
16 program or related goods and services, including, but not limited to, providing
17 information to state, federal or non-governmental entities, filing complaints with any
18 consumer protection entity, and engaging in discussions with other consumers
19 through online forums or any other means.

20 **12. "Person"** means a natural person, organization, or other legal entity, including a
21 corporation, partnership, proprietorship, association, cooperative, government or
22 governmental subdivision or agency, or any other group or combination acting as an
23 entity.

24 **13. "Relief defendants"** means Cherrytree Holdings, LLC, S&T Time, LLC, Virtucon
25 LLC, Kierston Kirschbaum, Melyna Harrison, and Tracy Lyman.

1 **14. "Representatives"** means defendants' officers, agents, servants, employees, and
2 attorneys, and any other person or entity in active concert or participation with them
3 who receives actual notice of this order by personal service or otherwise.

4 **15. "Telemarketing"** means any plan, program or campaign (whether or not covered by
5 the TSR, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or
6 services by means of the use of one or more telephones.

7
8 **ORDER**

9 **I.**

10 **BAN ON MARKETING OR SALE OF**
11 **BUSINESS COACHING PROGRAMS**

12 **IT IS THEREFORE ORDERED** that defendants and their representatives, whether
13 acting directly or through any entity, corporation, subsidiary, division, director, manager,
14 member, affiliate, independent contractor, accountant, financial advisor, or other device, are
15 **hereby permanently restrained and enjoined from:**

- 16 **A.** Advertising, marketing, promoting, offering for sale, or selling any business coaching
17 program; and
18 **B.** Assisting others engaged in advertising, marketing, promoting, offering for sale, or
19 selling any business coaching program.

20 **II.**

21 **PROHIBITED MISREPRESENTATIONS AND OTHER CONDUCT PROHIBITIONS**

22 **IT IS FURTHER ORDERED** that defendants and their representatives, whether acting
23 directly or through any entity, corporation, subsidiary, division, director, manager, member,
24 affiliate, independent contractor, accountant, financial advisor, or other device, are **hereby**
25 **permanently restrained and enjoined from:**

- 1 A. Making, or assisting others in making, directly or by implication, any false or misleading
2 statement or representation of material fact, including, but not limited to, any false or
3 misleading statement that defendants or any other individual or entity will provide a
4 refund to consumers who request one within a specified time period;
- 5 B. Failing to disclose or to disclose adequately to consumers material aspects of any refund
6 policy; and
- 7 C. Requiring consumers to sign a non-disparagement agreement as a condition of receiving
8 a refund.

9

10 **III.**
11 **PROHIBITIONS AGAINST DECEPTIVE AND ABUSIVE TELEMARKETING**
12 **PRACTICES**

13 **IT IS FURTHER ORDERED** that, in connection with telemarketing, defendants, and
14 their representatives, whether acting directly or through any entity, corporation, subsidiary,
15 division, director, manager, member, affiliate, independent contractor, accountant, financial
16 advisor, or other device, **are hereby permanently restrained and enjoined from** engaging in
17 or causing or assisting other persons to engage in, violations of any provision of the TSR,
18 including, but not limited to, the following:

- 19 A. Misrepresenting, directly or by implication, in the sale of goods or services, any material
20 aspect of the performance, efficacy, nature or essential characteristics of their products
21 and services, in violation of Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. §
22 310.3(a)(2)(iii);
- 23 B. Failing to disclose or to disclose adequately, in a clear and conspicuous manner, all
24 material terms and conditions of any refund policy, in violation of Section 310.3(a)(1)(iii)
25 of the TSR, 16 C.F.R. § 310.3(a)(1)(iii), including that consumers must request a refund
 within a specified time period after purchase;

1 C. Misrepresenting, directly or by implication, material aspects of the nature and terms of
2 any refund policy in violation of Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. §
3 310.3(a)(2)(iv), including that they will provide refunds to consumers who request one
4 within a specified time period;

5 D. Initiating, or causing others to initiate, outbound telephone calls to telephone numbers on
6 the National Do Not Call Registry (the "DNC Registry") in violation of Section
7 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), unless

- 8 1. the seller has obtained the express agreement, in writing, of such person to
9 place calls to that person. Such written agreement shall clearly evidence such
10 person's authorization that calls made by or on behalf of a specific party may
11 be placed to that person, and shall include the telephone number to which the
12 calls may be placed and the signature of that person; or
- 13 2. the seller has an established business relationship with such person and that
14 person has not previously stated that he or she does not wish to receive
15 outbound telemarketing calls made by or on behalf of the defendant or any
16 other individual or entity; and

17 E. Calling numbers on the DNC Registry without paying the annual fee necessary to access
18 the list of numbers on the DNC Registry in violation of Section 310.8 of the TSR, 16
19 C.F.R. § 310.8.

20
21 **IV.**
COOPERATION PROVISION

22 **IT IS FURTHER ORDERED** that the corporate defendants shall, in connection with
23 this action or any subsequent investigations related to, or associated with, the transactions or the
24 occurrences that are the subject of the complaint, cooperate in good faith with the FTC and any
25 other governmental agency or entity, and appear at such places and times as the FTC or any other

1 governmental agency or entity shall reasonably request, after written notice, for interviews,
 2 conferences, pretrial discovery, review of documents, and for such other matters as may be
 3 reasonably requested by the FTC or any other governmental agency or entity. If requested in
 4 writing by the FTC or any other governmental agency or entity, the corporate defendants shall
 5 appear and provide truthful testimony in any trial, deposition, or other proceeding related to, or
 6 associated with, the transactions or the occurrences that are the subject of the complaint, without
 7 the service of a subpoena upon them.

8
 9 **V.**
MONETARY RELIEF

10 **IT IS FURTHER ORDERED** that judgment is hereby entered in favor of the
 11 commission and against the corporate defendants, jointly and severally with all other defendants
 12 found liable in this case, in the amount of one hundred thirty million dollars (\$130,000,000), as
 13 equitable monetary relief for consumer injury; provided, however, that subject to the provisions
 14 of Section VI, this judgment shall be suspended upon the corporate defendants' completion of
 15 the requirements stated in subsections A and B of this section.

16 **A.** Effective upon the entry of this order, the corporate defendants shall surrender to the FTC
 17 all control, title, dominion, and interest in the following assets:

- 18 1. All assets of the corporate defendants;
- 19 2. All funds of any of the corporate defendants in the possession of the receiver.

20 **B.** To effect the surrender of the funds identified in subsection V.A.2, the court directs that
 21 the entities holding the funds or their successors shall, within ten (10) business days of
 22 the date of entry of this order, remit the funds to the commission by certified check(s) or
 23 other guaranteed funds payable to the FTC, Financial Management Office, or by wire
 24 transfer in accordance with directions provided by counsel for the commission. To the
 25 extent any identified nonparty cannot comply with this subsection without the assistance

1 of one or more corporate defendant, such party must, within three (3) business days of
2 receiving this order, notify the corporate defendant(s) and counsel for the commission of
3 its inability to comply. Such notification shall specify the actions by the corporate
4 defendant(s) that are necessary to comply with this order. The corporate defendant(s)
5 shall immediately complete any action necessary to facilitate the identified nonparty's
6 ability to timely comply with this subsection, and the failure of corporate defendant(s) to
7 complete such action within ten (10) days shall be deemed a violation of this order and
8 interest at the rate prescribed in 28 U.S.C. § 1961(a) shall immediately begin to accrue.

9 **C.** In the event of default on any obligation to make payment under this order, interest,
10 computed pursuant to 28 U.S.C. § 1961(a) shall accrue from the date of default to the
11 date of payment. In the event such default continues for ten (10) calendar days beyond
12 the date the payment is due, the entire amount of the judgment, less any amounts
13 previously paid pursuant to this order, together with interest, shall immediately become
14 due and payable. The corporate defendants shall be liable for all payments required by
15 this order and any interest on such payments.

16 **D.** All funds paid pursuant to this order shall be deposited into a fund administered by the
17 commission or its agents to be used for equitable relief, including, but not limited to,
18 redress to consumers, and any attendant expenses for the administration of such equitable
19 relief. In the event that direct redress to consumers is wholly or partially impracticable or
20 funds remain after the redress is completed, the commission may apply any remaining
21 funds for such other equitable relief (including consumer information remedies) as it
22 determines to be reasonably related to the defendants' practices alleged in the complaint.
23 Any funds not used for such equitable relief shall be deposited to the United States
24 Treasury as disgorgement. The corporate defendants shall have no right to challenge the
25 commission's choice of remedies or the manner of distribution under this subsection.

1 E. No portion of any payment under the judgment herein shall be deemed a payment of any
2 fine, penalty, or punitive assessment.

3 F. The corporate defendants relinquish all dominion, control, and title to the funds paid to
4 the fullest extent permitted by law. The corporate defendants shall make no claim to or
5 demand for return of the funds, directly or indirectly, through counsel or otherwise.

6 G. The corporate defendants agree that the facts as alleged in the complaint filed in this
7 action shall be taken as true without further proof in any bankruptcy case or subsequent
8 civil litigation pursued by the commission to enforce its rights to any payment or money
9 judgment pursuant to this order, including, but not limited to, a nondischargeability
10 complaint in any bankruptcy case. The corporate defendants further stipulate and agree
11 that the facts alleged in the complaint establish all elements necessary to sustain an action
12 pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and
13 this order shall have collateral estoppel effect for such purposes.

14 H. In accordance with 31 U.S.C. § 7701, the corporate defendants are hereby required,
15 unless they have done so already, to furnish to the commission their taxpayer identifying
16 numbers, which shall be used for the purposes of collecting and reporting on any
17 delinquent amount arising out of the corporate defendants' relationship with the
18 government.

19 I. The corporate defendants agree that they will not, whether acting directly or through any
20 corporation, partnership, subsidiary, division, agent, or other device, submit to any
21 federal or state tax authority any return, amended return, or other official document that
22 takes a deduction for, or seeks a tax refund or other favorable treatment for, any payment
23 made by the corporate defendants pursuant to this order.
24
25

**VI.
RIGHT TO REOPEN**

IT IS FURTHER ORDERED that:

- A. The commission's agreement to, and the court's approval of, this order are expressly premised upon the truthfulness, accuracy, and completeness of the corporate defendants' financial statements dated March 9, 2011 (the "financial statements"), all of which the corporate defendants assert are truthful, accurate, and complete. The corporate defendants and the commission stipulate that the corporate defendants' financial statements provide the basis for the monetary judgment in Section V of this order and that the commission has relied on the truthfulness, accuracy, and completeness of the corporate defendants' financial statements.
- B. If, upon motion by the commission, this court finds that the corporate defendants have:
- (1) materially misstated in their financial statements, the value of any asset; (2) made any material misrepresentation or omitted material information concerning their financial condition by failing to disclose any asset that should have been disclosed in their financial statements; or (3) made any other material misstatement or omission in their financial statements, the court shall terminate the suspension of the monetary judgment entered in Section V. The court, without further adjudication, shall enter a modified judgment holding the corporate defendants liable to the commission in the amount of one hundred thirty million dollars (\$130,000,000) for equitable monetary relief, less any amounts turned over to the FTC pursuant to Section V of this order. Upon such reinstatement of the monetary judgment, the court shall make an express determination that the judgment shall become immediately due and payable by the corporate defendants and the commission shall be entitled to interest computed from the day of entry of this order at the rate prescribed under 28 U.S.C. § 1961, as amended, on the unpaid balance.

1 The commission shall be permitted to execute on the judgment immediately after the
2 suspension is lifted and engage in discovery in aid of execution.

3 C. The corporate defendants acknowledge and agree that: (1) this monetary judgment is
4 equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive
5 assessment, or forfeiture; (2) any proceedings instituted under this section would be in
6 addition to, and not in lieu of, any other civil or criminal remedies as may be provided by
7 law, including any other proceedings that the FTC may initiate to enforce this order; and
8 (3) all money paid to satisfy the monetary judgment is irrevocably paid for purposes of
9 settlement between the parties.

10 D. Should this order be modified pursuant to this section, this order, in all other respects,
11 shall remain in full force and effect unless otherwise ordered by the court.

12
13 **VII.**

14 **PROHIBITION ON RELEASE OF CUSTOMER INFORMATION OR**
15 **CUSTOMER LISTS**

16 **IT IS FURTHER ORDERED** that the defendants and their representatives, whether
17 acting directly or through any corporation, partnership, subsidiary, division, agent, or other
18 device, are permanently restrained and enjoined from:

- 19 A. Disclosing, using, or benefitting from customer information, including the name, address,
20 telephone number, e-mail address, social security number, other identifying information,
21 or any data that enables access to a customer's account (including a credit card, bank
22 account, or other financial account), of any person that the defendants obtained prior to
23 entry of this order in connection with the advertisement, marketing, promotion, offering
24 for sale, or sale of any business coaching program; and
25 B. Failing to dispose of such customer information in all forms in their possession, custody,
or control within thirty (30) days after entry of this order. Disposal shall be by means

1 that protect against unauthorized access to the customer information, such as by burning,
 2 pulverizing, or shredding any papers, and by erasing or destroying any electronic media,
 3 to ensure that the customer information cannot practicably be read or reconstructed.
 4 *Provided, however,* that customer information need not be disposed of if currently under the
 5 control of the commission or the court-appointed receiver. Further, such information may be
 6 disclosed, to the extent requested by a government agency or required by a law, regulation, or
 7 court order.

8
 9 **VIII.**
LIFTING OF ASSET FREEZE

10 **IT IS FURTHER ORDERED** that the freeze of the corporate defendants' assets set
 11 forth in the preliminary injunction entered by this court on March 25, 2011, shall be lifted to the
 12 extent necessary to turn over the corporate defendants' assets as required by Section V of this
 13 order.

14
 15 **IX.**
APPOINTMENT OF RECEIVER TO WIND DOWN
CORPORATE DEFENDANTS AND LIQUIDATE ASSETS

16 **IT IS FURTHER ORDERED** that Robb Evans & Associates, LLC, the receiver
 17 appointed by prior orders of this court, is hereby appointed receiver for the purpose of taking the
 18 necessary steps to wind down the businesses of the corporate defendants, liquidate their assets,
 19 and pay any net proceeds to the FTC to satisfy the monetary judgment in this order. In carrying
 20 out these duties, the receiver shall be the agent of this court, shall be accountable directly to this
 21 court, and is authorized and directed to:

- 22
 23 **A.** Take any and all steps that the receiver concludes are appropriate to wind down the
 24 corporate defendants;
 25

1 **B.** Continue to exercise full control over the corporate defendants and continue to collect,
2 marshal, and take custody, control, and possession of all the funds, property, premises,
3 accounts, documents, mail, and other assets of, or in the possession or under the control
4 of, the corporate defendants, wherever situated, the income and profits therefrom, and all
5 sums of money now or hereafter due or owing to the corporate defendants, with full
6 power to collect, receive, and take possession of all goods, chattels, rights, credits,
7 monies, effects, lands, leases, books and records, limited partnership records, work
8 papers, and records of accounts, including computer-maintained information, contracts,
9 financial records, monies on hand in banks and other financial institutions, and other
10 papers and documents of other individuals, partnerships, or corporations whose interests
11 are now held by or under the direction, possession, custody, or control of the corporate
12 defendants (the "receivership estate");

13 **C.** Continue to have full control over the management and personnel of the corporate
14 defendants, including the authority to remove, as the receiver deems necessary or
15 advisable, any director, officer, independent contractor, employee, or agent of these
16 defendants from control of, management of, or participation in, the affairs of these
17 defendants;

18 **D.** Take all steps necessary or advisable, including issuing subpoenas, to locate and liquidate
19 all other assets of the corporate defendants, cancel the corporate defendants' contracts,
20 collect on amounts owed to the corporate defendants, and take such other steps as may be
21 necessary to wind-down, terminate, and dissolve the corporate defendants efficiently;

22 **E.** Take all steps necessary or advisable, including issuing subpoenas, to identify the name,
23 address, telephone number, date of purchase, program or product purchased, total amount
24 paid, amount of any full or partial refund or chargeback, and payment information for
25

1 consumers who were charged by the corporate defendants, and provide the FTC, upon
2 request, with any customer records or other business records of the corporate defendants;

3 **F.** Make payments and disbursements from the receivership estate that are necessary or
4 advisable for carrying out the directions of, or exercising the authority granted by, this
5 order. The receiver shall apply to the court for prior approval of any payment of any debt
6 or obligation incurred by the corporate defendants prior to the date of entry of the
7 temporary restraining order in this action, except payments that the receiver deems
8 necessary or advisable to secure and liquidate assets of the corporate defendants, such as
9 rental payments or payment of liens;

10 **G.** Continue to perform all acts necessary or advisable to complete an accounting of the
11 receivership assets, and prevent unauthorized transfer, withdrawal, or misapplication of
12 assets;

13 **H.** Continue to maintain accurate records of all receipts and expenditures that the firm makes
14 as receiver;

15 **I.** Enter into contracts and purchase insurance as advisable or necessary;

16 **J.** Continue to defend, compromise, adjust, or otherwise dispose of any or all actions or
17 proceedings instituted in the past or in the future against the receiver in the firm's role as
18 receiver, or against the corporate defendants, as the receiver deems necessary and
19 advisable to carry out the receiver's mandate under this order;

20 **K.** Continue to institute, compromise, adjust, appear in, intervene in, or become party to
21 such actions or proceedings in state, federal, or foreign courts or arbitration proceedings
22 as the receiver deems necessary and advisable to carry out the receiver's mandate under
23 this order;

1 L. Continue to maintain bank accounts created as designated depositories for funds of the
2 corporate defendants, and make all payments and disbursements from the receivership
3 estate from such an account;

4 M. Continue to perform all incidental acts that the receiver deems to be advisable or
5 necessary, which includes retaining, hiring, or dismissing any employees, independent
6 contractors, or agents;

7 N. Continue to cooperate with reasonable requests for information or assistance from any
8 state or federal law enforcement agency;

9 O. Dispose of, or arrange for the disposal of, the records of the corporate defendants no later
10 than six months after the court's approval of the receiver's final report as to the
11 receivership estate, except that:

12 1. to the extent that such records are reasonably available, the receiver shall arrange
13 for records sufficient to ascertain the funds that an individual consumer paid to
14 the corporate defendants and any refunds provided to individual consumers, to be
15 retained for a minimum of one year from the entry of this order, and

16 2. if state or local law regulating the corporate defendants' business requires the
17 retention of particular records for a specified period, the receiver shall arrange for
18 such records to be disposed of after the specified period has expired.

19 To safeguard the privacy of consumers, records containing personal financial information
20 shall be shredded, incinerated, or otherwise disposed of in a secure manner. For records
21 that must be retained, the receiver may elect to retain records in their original form or to
22 retain photographic or electronic copies;

23 P. Perform all acts necessary to protect, conserve, preserve, and prevent waste or dissipation
24 of the corporate defendants' assets until their sale;

25 Q. Sell the corporate defendants' assets without further order of the court;

1 **R.** Enter into agreements in connection with the reasonable and necessary performance of
2 the receiver's duty to sell the corporate defendants' assets, including, but not limited to,
3 the retention of assistants, agents, or other professionals to assist in the sale of these
4 assets; and

5 **S.** Distribute to the commission, without further order of the court, the funds received from
6 the sale of the corporate defendants' assets.

7
8 **X.**
9 **COMPENSATION OF RECEIVER**

10 **IT IS FURTHER ORDERED** that the receiver and all personnel hired by the receiver,
11 including counsel to the receiver and accountants, are entitled to reasonable compensation for the
12 performance of duties pursuant to this order from the assets now held by, in the possession or
13 control of, or which may be received by, the corporate defendants. The receiver shall apply to
14 the court for approval of specific amounts of compensation and expenses, and must not increase
15 the hourly rates used as the bases for such fee applications without prior approval of the court.

16 **XI.**
17 **RECEIVER'S FINAL REPORT AND DISBURSEMENT**

18 **IT IS FURTHER ORDERED** that:

19 **A.** The receiver shall, as directed in Section V of this order, liquidate the assets of the
20 corporate defendants as soon as practicable. No later than sixty (60) days from the date
21 of the entry of this order, the receiver shall file and serve on the parties a report (the
22 "final report") to the court that details the steps taken to dissolve the receivership estate.
23 The final report must include an accounting of the receivership estate's finances and total
24 assets and a description of what other actions, if any, must be taken to wind down the
25 corporate defendants.

1 **B.** The receiver shall mail copies of the final report to all known creditors of the corporate
2 defendants with a notice stating that any objections to paying any assets of the corporate
3 defendants to satisfy the receiver's costs and expenses and the monetary judgment set
4 forth in this order must be submitted to the court and served by mail upon the receiver
5 and the parties within thirty (30) days of the mailing of the final report.

6 **C.** No later than thirty (30) days after submission of the final report, the receiver shall file an
7 application for payment of compensation and expenses associated with his performance
8 of his duties as receiver.

9 **D.** The court will review the final report and any objections to the report and, absent a valid
10 objection, will issue an order directing that the receiver:

- 11 1. pay the reasonable costs and expenses of administering the receivership estate,
12 including compensation of the receiver and the receiver's personnel authorized by
13 Section X of this order or other orders of this court; and
14 2. pay all remaining funds to the FTC or its designated agent to reduce the monetary
15 judgment in Section V.

16 **E.** If subsequent action (such as the completion of tax returns or further action to recover
17 funds for the receivership estate) is appropriate, the receiver shall file an additional report
18 ("supplemental report") describing the subsequent action and a subsequent application for
19 the payment of fees and expenses related to the subsequent action.

20 **F.** With court approval, the receiver may hold back funds for a specified period as a reserve
21 to cover additional fees and costs related to actions to be addressed in a supplemental
22 report. If the receiver does not make a supplemental application for fees and expenses
23 within the specified period, or if funds remain in the reserve fund after the payment of
24 fees and expenses approved by the court in response to such a supplemental application,
25

1 all funds in the reserve funds shall be immediately paid to the FTC or its designated
2 agent.

3
4 **XII.**
ORDER ACKNOWLEDGMENTS

5 **IT IS FURTHER ORDERED** that the corporate defendants obtain acknowledgments of
6 receipt of this order:

- 7 **A.** Within seven (7) days of entry of this order, each corporate defendant must submit to the
8 commission an acknowledgment of receipt of this order sworn under penalty of perjury.
- 9 **B.** For five (5) years after entry of this order, each corporate defendant must deliver a copy
10 of this order to: (1) all principals, officers, directors, and managers; (2) all employees,
11 agents, and representatives who participate in telemarketing; and (3) any business entity
12 resulting from any change in structure as set forth in XIII below. Delivery must occur
13 within seven (7) days of entry of this order for current personnel. To all others, delivery
14 must occur before they assume their responsibilities.
- 15 **C.** From each individual or entity to which a corporate defendant delivered a copy of this
16 order, that corporate defendant must obtain, within thirty (30) days, a signed and dated
17 acknowledgement of receipt of this order.

18 **XIII.**
19 **COMPLIANCE REPORTING**

20 **IT IS FURTHER ORDERED** that the corporate defendants make timely submissions to
21 the commission:

- 22 **A.** One (1) year after entry of this order, the corporate defendants must submit a
23 compliance report, sworn under penalty of perjury. Each corporate defendant must:
24 (a) designate at least one telephone number and an e-mail, physical, and postal
25 address as points of contact, which representatives of the commission may use to

1 communicate with that corporate defendant; (b) identify all of that corporate
2 defendant's businesses by all of their names, telephone numbers, and physical, postal,
3 e-mail, and Internet addresses; (c) describe the activities of each business, including
4 the products and services offered, the means of advertising, marketing, and sales, and
5 the involvement of any other defendant; (d) describe in detail whether and how that
6 defendant is in compliance with each section of this order; and (e) provide a copy of
7 each order acknowledgment obtained pursuant to this order, unless previously
8 submitted to the commission;

9 **B.** For ten (10) years following entry of this order, each corporate defendant must submit
10 a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any
11 change in the following: (a) any designated point of contact; or (b) the structure of
12 any corporate defendant or any entity that corporate defendant has any ownership
13 interest in or directly or indirectly controls that may affect compliance obligations
14 arising under this order, including: creation, merger, sale, or dissolution of the entity
15 or any subsidiary, parent, or affiliate that engages in any acts or practices subject to
16 this order.

17 **C.** Each corporate defendant must submit to the commission notice of the filing of any
18 bankruptcy petition, insolvency proceeding, or any similar proceeding by or against
19 such corporate defendant within fourteen (14) days of its filing.

20 **D.** Any submission to the commission required by this order to be sworn under penalty
21 of perjury must be true and accurate and comply with 18 U.S.C. § 1746, such as by
22 concluding: "I declare under penalty of perjury under the laws of the United States of
23 America that the foregoing is true and correct. Executed on: _____" and supplying
24 the date, signatory's full name, title (if applicable), and signature.
25

1 E. Unless otherwise directed by a commission representative in writing, all submissions
 2 to the commission pursuant to this order must be e-mailed to DEbrief@ftc.gov or sent
 3 by overnight courier (not the U.S. Postal Service) to: Associate Director for
 4 Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600
 5 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin:
 6 FTC v. Ivy Capital, Inc., Fortune Learning System, LLC, Vianet Inc., 3 Day MBA,
 7 LLC, Global Finance Group, LLC, Virtual Profit, LLC, ICI Development, LLC, Ivy
 8 Capital, LLC, Logic Solutions, LLC, Oxford Debt Holdings, LLC, Revsynergy, LLC,
 9 and Sell It Visions, LLC (X110017).

10 XIV. 11 RECORDKEEPING

12 IT IS FURTHER ORDERED that the corporate defendants must create certain records
 13 for ten (10) years after entry of this order, and retain each such records for five (5) years.
 14 Specifically, the corporate defendants must maintain the following records:

- 15 A. Accounting records showing the revenues from all goods or services sold, all costs
 16 incurred in generating those revenues, and the resulting net profit or loss;
- 17 B. Personnel records showing, for each person providing services, whether as an employee
 18 or otherwise, that person's name, addresses, and telephone numbers; job title or position;
 19 dates of service; and, if applicable, the reason for termination;
- 20 C. Customer files showing the names, addresses, telephone numbers, dollar amounts paid,
 21 and the quantity and description of goods or services purchased;
- 22 D. Complaints and refund requests, whether received directly or indirectly, such as through a
 23 third party, and any response;
- 24 E. All records necessary to demonstrate full compliance with each provision of this order,
 25 including all submissions to the commission; and

1 F. A copy of each advertisement or other marketing material.

2
3 **XV.**
4 **COMPLIANCE MONITORING**

5 **IT IS FURTHER ORDERED** that, for the purpose of monitoring the corporate
6 defendants' compliance with this order, including the financial representations upon which part
7 of the judgment was suspended and any failure to transfer any assets as required by this order:

8 A. Within fourteen (14) days of receipt of a written request from a representative of the
9 commission, each corporate defendant must: submit additional compliance reports or
10 other requested information, which must be sworn under penalty of perjury; appear for
11 depositions; and produce documents, for inspection and copying. The commission is also
12 authorized to obtain discovery, without further leave of court, using any of the procedures
13 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),
14 31, 33, 34, 36, 45, and 69, provided that the corporate defendants, after attempting to
15 resolve a dispute without court action and for good cause shown, may file a motion with
16 this court seeking an order including one or more of the protections set forth in Rule
17 26(c).

18 B. For matters concerning this order, the commission is authorized to communicate directly
19 with each corporate defendant. The corporate defendants must permit representatives of
20 the commission to interview any employee or other person affiliated with any defendant
21 who has agreed to such an interview. The person interviewed may have counsel present.

22 C. The commission may use all other lawful means, including posing, through its
23 representatives, as consumers, suppliers, or other individuals or entities, to the corporate
24 defendants or any individual or entity affiliated with the corporate defendants, without
25 the necessity of identification or prior notice. Nothing in this order limits the

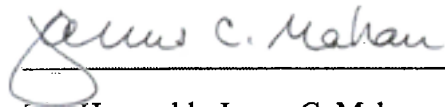
1 commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the
2 FTC Act, 15 U.S.C. §§ 49, 57b-1.

3
4 **XVI.**

5 **RETENTION OF JURISDICTION**

6 **IT IS FURTHER ORDERED** that this court retains jurisdiction of this matter for
7 purposes of construction, modification, and enforcement of this order.

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11 **IT IS SO ORDERED:**

12
13 

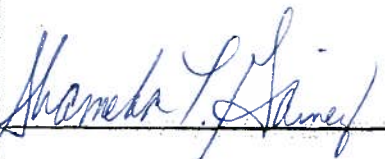
14 The Honorable James C. Mahan

15 UNITED STATES DISTRICT JUDGE

16 DATED: December 20, 2012

1 The parties consent to the terms and conditions set forth above and consent to entry of this
2 stipulated final judgment and order for permanent injunction and monetary relief at the court's
3 convenience and without further notice to the parties.

4
5 **FOR THE PLAINTIFF:**

6
7
8  Dated: 12/18/12

10
11 SHAMEKA L. GAINESY
sgainey@ftc.gov
12 ROSS A. FELDMANN
rfeldmann@ftc.gov
13 Federal Trade commission
600 Pennsylvania Avenue, NW, H-286
14 Washington, DC 20580
202-326-2570 (Gainey)
15 202-326-2207 (Feldmann)
16 202-326-3395 (Fax)

17 BLAINE T. WELSH
blaine.welsh@usdoj.gov
18 Assistant United States Attorney
Nevada Bar No. 4790
19 333 Las Vegas Blvd. South, Suite 5000
20 Las Vegas, NV 89101
702-388-6336
21 702-388-6787 (Fax)

22 Attorneys for Plaintiff


23 **FEDERAL TRADE COMMISSION**
24
25

1 **FOR THE DEFENDANTS:**

2 **Ivy Capital, Inc.**

3
4  Dated: 7-24-12
5 Kyle G. Kirschbaum, President
6

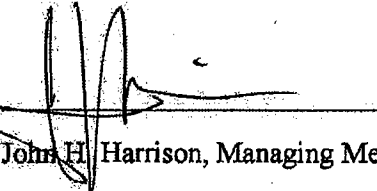
7 **Fortune Learning System, LLC**

8
9  Dated: 7-24-12
10 John H. Harrison, Managing Member

11 **Vianet Inc.**

12
13  Dated: 7-24-12
14 Kyle G. Kirschbaum, President
15

16 **3 Day MBA, LLC**

17
18  Dated: 7-24-12
19 John H. Harrison, Managing Member
20

21 **Global Finance Group, LLC**

22
23 _____ Dated: _____
24 Ben Hoskins, Managing Member
25

1 **FOR THE DEFENDANTS:**

2 **Ivy Capital, Inc.**

3
4 _____ Dated: _____

5 Kyle G. Kirschbaum, President

6
7 **Fortune Learning System, LLC**

8
9 _____ Dated: _____

10 John H. Harrison, Managing Member

11 **Vianet Inc.**

12
13 _____ Dated: _____

14 Kyle G. Kirschbaum, President

15
16 **3 Day MBA, LLC**

17
18 _____ Dated: _____

19 John H. Harrison, Managing Member

20
21 **Global Finance Group, LLC**

22
23  _____ Dated: _____

24 Ben Hoskins, Managing Member

1 **Virtual Profit, LLC**

2 

3 Dated: 7-24-12

4 Steven E. Lyman, Managing Member

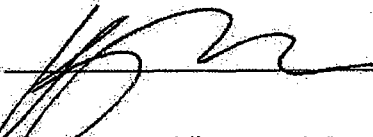
5
6 **ICI Development, Inc.**

7 

8 Dated: 7-24-12

9 Kyle G. Kirschbaum, President

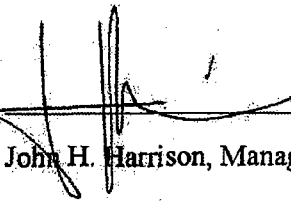
10 **Ivy Capital, LLC**

11 

12 Dated: 7-24-12

13 Cherrytree Holdings, LLC, Managing Member
14 by Kyle Kirschbaum, its Managing Member

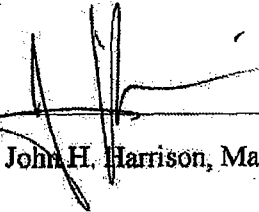
15
16 **Logic Solutions, LLC**

17 

18 Dated: 7-24-12

19 John H. Harrison, Managing Member

20
21 **Oxford Debt Holdings, LLC**

22 

23 Dated: 7-24-12

24 John H. Harrison, Managing Member

1 **Revsynergy, LLC**

2

3

Dated: 8/9/2012

4

John H. Harrison, President

5

Sell It Vizions, LLC

6

7

Dated: 8/9/2012

8

John H. Harrison, Managing Member

9

10

11

Dated: 8/10/2012

12

JEFFREY WILLIS, ESQ.

13

CHAD R. FEARS, ESQ.

14

CASEY G. PERKINS, ESQ.

15

SNELL & WILMER L.L.P.

16

3883 HOWARD HUGHES PARKWAY, SUITE 1100

17

LAS VEGAS, NEVADA 89169

18

Attorneys for Defendants

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Certificate of Service

I hereby certify that on December 18, 2012, I electronically filed the foregoing document with the clerk of the court using CM/ECF, which will send a notice of electronic filing to all counsel of record.

/s/ Shameka L. Gainey
Shameka L. Gainey